

DOCUMENT RESUME

03341 - [A2433573]

[Protest against Agency's Failure to Provide a Firm with a Copy of a Solicitation]. B-189230. August 30, 1977. 2 pp. + 2 enclosures (2 pp.).

Decision re: Carolina Shipping Co.; Eller & Co., Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Anchor Stevedoring Co., Inc.; Department of the Army: Military Traffic Management Command.

Authority: 4 C.F.R. 20(b)(2). A.S.P.R. 2-407.8(b)(3). B-187476 (1976).

A company requested that a solicitation be cancelled because of the failure of the agency to provide them with a copy of the solicitation. A second company protested the contracting activity's decision to hold the procurement in abeyance until the first protest was resolved. The first protest was untimely since it was not filed within 10 days of the closing date for receipt of proposals. The agency's decision to hold the procurement in abeyance pending resolution of a protest filed prior to the award was proper under pertinent regulations. (Author/SC)

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DECISION



D. Macfarther
THE COMPTROLLER GENERAL OF THE UNITED STATES
Proc. I
WASHINGTON, D.C. 20548

FILE: B-189230

DATE: August 30, 1977

MATTER OF: Carolina Shipping Company; Eller & Company, Inc.

DIGEST:

1. Protest against agency's failure to provide firm with copy of solicitation is untimely as not filed within 10 days of closing date for receipt of proposals as advertised in Commerce Business Daily.
2. Holding procurement in abeyance pending resolution of protest filed prior to award is proper under pertinent regulations.

The Carolina Shipping Company (Carolina) protests the failure of the Military Traffic Management Command (MTMC), Department of the Army, to solicit it under request for proposals No. DAHC24-77-R-0004 and requests that the solicitation be canceled on account of this failure and that Carolina be allowed to compete on any new solicitation that would be subsequently issued. Eller & Company, Inc. (Eller), protests the contracting activity's decision to hold the procurement in abeyance until the Carolina protest is resolved by our Office. Anchor Stevedoring Co., Inc., as an offeror under the RFP and, therefore, an interested party to the protest, has questioned the timeliness of Carolina's protest.

With regard to the timeliness issue, the procurement was advertised in the Commerce Business Daily (CBD) on March 14, 1977, with the stated closing date as April 19, 1977. On March 15 the solicitation package was sent to 14 prospective contractors. Of these, 12 had responded to a request for an expression of interest and two requested copies of the solicitation as the result of the CBD notice. While Carolina did not respond directly to the request for expression of interest, it did make known to a MTMC representative its interest in the procurement. By inadvertence this expression of interest was overlooked when copies of the solicitation were sent out. By the date for the submission of proposals, several proposals had been received. Negotiations were conducted during the period of May 31 - June 2 with the firms which submitted proposals, and submission of best and final offers was requested by June 15. Prior to the latter date the contracting activity was notified of the Carolina protest, and on June 9 the request for best and final offers was postponed until further notice.

B-169230

On the basis of the foregoing facts, we believe, as explained below, that the Carolina protest is untimely filed with our Office and therefore is not for consideration. Our Bid Protest Procedures, specifically 4 C.F.R. § 20(b)(2) (1976), provide in part that:

"(b)(2) * * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

While Carolina, based on the events already described, could properly have believed that it would be sent, in a timely manner, a copy of the solicitation, it should have been aware no later than the deadline date published in the CBD for submission of proposals of its basis for protest. See Southeastern Carbonics, Inc., B-187476, November 12, 1976, 76-2 CPD 406. The Carolina protest was received in our Office on May 31, clearly more than 10 working days after the published closing date of April 19, 1977.

As regards the Eller protest against the failure of the contracting activity to proceed with the procurement, paragraph 2-407.8(b)(3) of the Armed Services Procurement Regulation (1976 ed.) provides that:

"(3) When a written protest against the making of an award is received, award shall not be made until the matter is resolved, unless the contracting officer determines that:

- "(i) the items to be procured are urgently required; or
- "(ii) delivery or performance will be unduly delayed by failure to make award promptly; or
- "(iii) a prompt award will otherwise be advantageous to the Government."

Since the contracting officer apparently did not determine that an award was justified under the regulation, he acted properly in holding the procurement in abeyance pending a resolution of the protest.

Accordingly, Carolina's protest is dismissed as untimely, and Eller's protest is denied.

R. F. Keller
Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

D. Macfarther

Proc. I

P-189230

August 30, 1977

The Honorable Lawton Chiles
United States Senate

Dear Senator Chiles:

As regards your June 30, 1977, letter (45 Stephen Erb) concerning the Eller & Company, Inc., protest under Military Traffic Management Command request for proposals No. DAHC24-77-R-0004, enclosed is a copy of our decision of today on the matter. Also, the enclosures with your letter are returned as requested.

Sincerely yours,


Acting Comptroller General
of the United States

Enclosures - 2



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

D. Hasfurther

Proc. X I

B-189230

August 30, 1977

The Honorable Strom Thurmond
United States Senate

Dear Senator Thurmond:

As regards your letters of May 31 and June 3, 1977, concerning the Carolina Shipping Company protest under the Military Traffic Management Command request for proposals No. DAHC24-77-R-0004, we are enclosing a copy of our decision of today on the matter.

Sincerely yours,


Acting Comptroller General
of the United States

Enclosure